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DATE FILED: JAN 08 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WELLS FARGO BANK, N.A.,
Interpleader Plaintiff,

-v-

ESM FUND I, LP, ET AL,
Interpleader Defendants.

10 Civ. 7332 (AJN)

ORDER

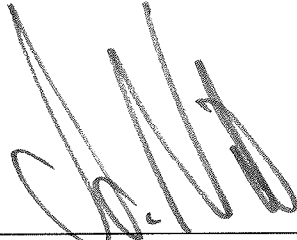
ALISON J. NATHAN, District Judge:

The Court has received the attached letter requesting the stay of enforcement of judgment in this action pending appeal be lifted in light of the decision of the Court of Appeals affirming the judgment of the Court. The Court has not received any response to this letter nor any communication opposing the request that the stay pending appeal be lifted.

IT IS ORDERED that the mandate of the Court of Appeals having issued on December 26, 2012, affirming the judgment of the Court, the stay of enforcement of judgment is hereby lifted.

IT IS FURTHER ORDERED that the escrow funds be distributed as requested in the attached letter, with the exception of the requested Fee Amount of \$402,508.55 at issue in the supplemental motion for fees.

Dated: January 8, 2013
New York, New York


ALISON J. NATHAN
UNITED STATES DISTRICT JUDGE



Jarrett M. Behar
Partner
JBehar@skmlaw.net

December 20, 2012

Via Email (NathanNYSDChambers@nysd.uscourts.gov)

Hon. Alison J. Nathan, U.S.D.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *Wells Fargo Bank, N.A. v. ESM Fund I L.P.*,
10 Civ. 7332 (S.D.N.Y.) (AJN) (MHD)

Dear Judge Nathan:

This firm represents interpleader defendants and cross-claimants ESM Fund I, LP, Compass SAV LLC, Compass Offshore SAV PCC Ltd., and ESM Management LLC (the "ESM Parties") in the above-referenced action. On December 5, 2012, the Court of Appeals issued a Summary Order unanimously affirming the District Court's Order and Judgment, dated December 13, 2011 [Docket No. 125] that, among other things, required interpleader plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") to reverse a credit given to interpleader defendant Financial Security Assurance Inc. ("Assured") and distribute the interpleader funds in a manner consistent with that Order and Judgment. The deadline for Assured to petition for panel rehearing pursuant to Fed. R. App. P. 41 expired yesterday, December 19, 2012, and, pursuant to Fed. R. App. P. 42, the Mandate from the Court of Appeals should issue no later than December 26, 2012.

The Order and Judgment also awarded the ESM Parties attorneys' fees and costs in the amount of \$411,512.79 to be paid from the amounts due to the uninsured certificateholders as a result of the reversal of the credit to Assured, and stated that the ESM Parties "may seek reimbursement for fees and expenses incurred after August 31, 2011 after entry of this Order." Accordingly, subsequent to the Court of Appeals' affirmance of the Order and Judgment, the ESM Parties moved for a supplemental award of attorneys' fees and costs in the additional amount of \$402,508.55 representing the actual attorneys' fees and costs incurred by the ESM Parties on this matter since August 31, 2011 [Docket Nos. 170 through 172] (the "Supplemental Fee Motion"). The Supplemental Fee Motion is unopposed subject to the Court's determination of the reasonableness of the amount requested.

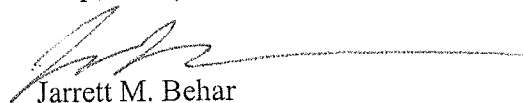
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Hon. Alison J. Nathan, U.S.D.J.
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As a result of the foregoing, the ESM Parties respectfully request, upon issuance of the Mandate, that: (1) the stay of enforcement pending appeal granted by your Honor on July 24, 2012 [Docket No. 152] be immediately lifted; (2) Wells Fargo be ordered to distribute the escrow funds, less the amount of \$402,508.55 sought in the Supplemental Fee Motion (the "Fee Amount"), pursuant to the Order and Judgment on the next scheduled distribution date; (3) Wells Fargo be ordered to hold the Fee Amount in escrow pending the Court's determination of the Supplemental Fee Motion; and (4) upon the determination of the Supplemental Fee Motion, Wells Fargo be ordered to make a second distribution of funds on the next scheduled distribution date after the Supplemental Fee Motion is decided to the ESM Parties of any amounts awarded pursuant to the Supplemental Fee Motion and to the uninsured certificateholders to the extent that the amount sought in the Supplemental Fee Motion is reduced.

The undersigned is available at the Court's convenience should the Court have any questions.

Respectfully submitted,



Jarrett M. Behar

cc: Counsel for all parties and all *pro se* parties (via e-mail)